

May.22. 2002 9:09AM

STATE MS - DESOTO CO. *new*

No.9112 P. 28

JUN 13 1 20 PM '02

This instrument prepared by:
 Brian K. Cary, Esquire
 McGuireWoods LLP
 101 South Tryon Street, Suite 3700
 Charlotte, NC 28280
 (704) 373-8989

BK 421 PG 535
 W.E. DAVIS CH. CLK.

Indexing Instructions
 Part of SE 114
 Sec. 25, T15 N3 W
 DeSoto County, Mississippi

RETURN TO: HOLCOMB DUNBAR, P.A.
 P.O. BOX 160
 Southaven, MS 38671
 (662) 344-9664

EASEMENT AGREEMENT

14th day of JUNE THIS EASEMENT AGREEMENT (this "Agreement") is made and entered into as of this day of May, 2002, between **LOWE'S HOME CENTERS, INC.**, a North Carolina corporation ("Lowe's"), whose address for notice purposes is P.O. Box 1111, (Hwy 288 East (East Dock), North Wilkesboro, North Carolina 28659), North Wilkesboro, North Carolina 28656, and **CITY OF SOUTHAVEN, MISSISSIPPI** (the "City"), whose address for notice purposes is 8710 Northwest Drive, Southaven, Mississippi 38671.

RECITALS:

A. Lowe's owns fee title to that certain real property (the "Lowe's Property") lying and being in the County of DeSoto, State of Mississippi, as more particularly described on Exhibit A attached hereto and made a part hereof for all purposes.

B. The City owns fee title to that certain real property (the "City Property") lying and being in the County of DeSoto, State of Mississippi, as more particularly described on Exhibit B attached hereto and made a part hereof for all purposes.
 ↳ Chambliss Drive

C. The City has agreed to grant to Lowe's a non-exclusive easement over a portion of the City Property (the "Easement Tract") in the location shown on the site plan attached hereto as Exhibit C and made a part hereof for all purposes (the "Site Plan"), which Easement Tract is more particularly described on Exhibit D attached hereto and made a part hereof for all purposes, for Lowe's to install a monument/directional sign by to be constructed by Lowe's, if constructed, in the location on the Easement Tract designated as "Directional Sign" on the Site Plan (the "Directional Sign").

AGREEMENT:

NOW, THEREFORE, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto hereby agree and acknowledge as follows:

1. Grant of Sign Easement by the City. The City does hereby GRANT, BARGAIN, SELL AND CONVEY, subject to, however, any and all "Governmental Requirements" (as defined in Paragraph 4 below), to Lowe's, for the benefit of Lowe's and its lessees, sublessees, licensees, successors and assigns, agents, employees and contractors, a non-exclusive access easement for (i) vehicular and pedestrian ingress and egress in, upon, over and across the Easement Tract for the sole purpose of allowing Lowe's and its lessees, sublessees, licensees, successors and assigns, agents, employees and contractors to install and maintain sign panel(s) on the Directional Sign, if constructed, and (ii) the installation and maintenance of sign panel(s) on the Directional Sign, if constructed, in the panel locations and of the size shown on the sign renderings for the Directional Sign attached hereto as Exhibit E and made a part hereof for all purposes, subject, however, to the covenants and conditions hereinafter set forth. The easement granted herein (i) shall be perpetual and non-exclusive, it being understood that the City hereby reserves and retains the right to grant and convey similar rights and easements to such other persons, firms and entities as the City may deem proper without the consent of Lowe's, provided that the use of the Easement Tract and the Directional Sign by such other persons, firms and entities does not materially obstruct or prevent the use of the same by Lowe's and its successors and assigns, for the uses and purposes herein

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described, (ii) shall be on an "AS-IS, WHERE-IS" basis, Lowe's hereby acknowledging that the City makes no representations or warranties as to the City's ability to utilize the Easement Tract and the Directional Sign, and (iii) shall not restrict (a) the rights of Lowe's to use the Easement Tract and the Directional Sign in any manner not inconsistent with the covenants and conditions contained herein, (b) the ability of Lowe's to construct any improvements within the Easement Tract and/or landscape the Easement Tract as long as such improvements and landscaping are not in contradiction with the rights granted to Lowe's herein, or (c) the right of Lowe's, at Lowe's sole cost, to relocate the Easement Tract and/or the Directional Sign to other location(s) on the City's Property.

2. Sign Maintenance. Lowe's shall be responsible for maintaining the Directional Sign structure, if constructed. Lowe's shall be responsible for the maintenance of any sign panels installed on the Directional Sign by Lowe's and/or its lessees, sublessees, licensees, successors and assigns, agents, employees and contractors.

3. Indemnification of the City. Lowe's and its lessees, sublessees, licensees, successors and assigns, agents, employees and contractors, and any future holders of the easement rights covering the Easement Tract and/or the Directional Sign granted herein, or any part thereof, jointly and severally agree to indemnify, defend, save and hold harmless the City from and against any and all losses, liabilities, costs (including reasonable attorneys' fees), expenses, penalties, judgments, claims and damages of every kind or character arising out of this Agreement and the use and operation of, on or about the Easement Tract and/or the Directional Sign by Lowe's and its successors and assigns, and its agents, employees, contractors, licensees and invitees, except to the extent such losses are caused by the gross negligence or willful misconduct of the City.

4. Compliance/Operation of Easement Tract and/or the Directional Sign. Lowe's and its lessees, sublessees, licensees, successors and assigns, agents, employees and contractors shall timely comply with all governmental approvals, requirements, laws, rules, regulations, ordinances and permits, whether local, state or federal (collectively, "Governmental Requirements") relating to its use of the Easement Tract and/or the Directional Sign hereunder. Immediately upon the receipt of any notice from any applicable governmental authority of noncompliance by Lowe's with any Governmental Requirements relating to the Easement Tract and/or the Directional Sign, the City shall provide Lowe's with written notice thereof and Lowe's shall promptly correct such noncompliance. Neither Lowe's nor its lessees, sublessees, licensees, successors and assigns, agents, employees and contractors shall do any act whereby it is reasonably foreseeable that the value of any part of the Easement Tract and/or the Directional Sign may be lessened. In any event, Lowe's shall be liable for any loss of value to any part of the Easement Tract and/or the Directional Sign directly caused by its actions or the actions of its lessees, sublessees, licensees, successors and assigns, agents, employees and contractors, except for any actions permitted pursuant to this Agreement.

5. No Dedication. The easements granted herein are not intended and shall not be construed as a gift or dedication of the Easement Tract and/or the Directional Sign or any part thereof to the general public or for the general public or for any public use or purpose whatsoever, and the parties agree to refrain from and take whatever steps that may be necessary to avoid such dedication.

6. Enforcement of Rights. In the event any party hereto fails to perform its respective obligations hereunder or otherwise violates the provisions hereof, the other party shall have the right to enforce this Agreement by an action in law or in equity (including a suit for specific performance) without thereby waiving the right to also recover in an action for damages any sums expended by such other party at its discretion in performing such obligations. In the event that any party hereto institutes a legal proceeding against any other party to enforce the obligations arising hereunder or the provisions hereof, the party instituting such legal proceeding shall be entitled to recover reasonable attorneys' fees (including those incurred on appeal or whether or not suit be filed) and costs if prevailing therein.

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7. Covenants Running with the Land. All rights and obligations arising hereunder are covenants running with the land, binding upon and inuring to the benefit of the respective parties and their respective successors in title.

8. Governing Law. The laws of the State of Mississippi shall govern this Agreement.

9. No Partnership. None of the terms and provisions of this Agreement shall be deemed or construed to create a partnership between or among the parties hereto, nor shall it cause the parties hereto to be considered joint venturers or members of any joint enterprise. Each party to this Agreement shall be considered a separate entity and no party hereto shall have the right to act as agent for any other party hereto unless expressly authorized to do so by written instrument signed by the authorizing party.

10. Amendment. Except as otherwise specifically set forth herein, neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by all of the parties hereto and recorded in the appropriate public records of DeSoto County, Mississippi. No consent to the amendment, modification or termination of the provisions of this Agreement shall ever be required of any invitee, licensee or tenant of Lowe's or the City or their respective successors and assigns.

11. Condemnation. Nothing in this Agreement shall be construed to give the owner of any tract of land covered hereby in connection with any exercise of eminent domain or transfer in lieu thereof affecting such other owner's property or to give the public or any governmental authority any rights and property not obtained from the owner of such property. The award or payment attributable to such property shall be payable only to the owner of the property which is the subject of any such exercise.

12. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the terms and provisions hereof.

13. Entire Agreement. The Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement.

14. Counterparts. This Agreement may be executed in several counterparts and all counterparts so executed shall together be deemed to constitute one final agreement as if signed by all parties hereto and all counterparts shall be deemed to be an original.

[remainder of page left intentionally blank]

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names as of the date first above written.

LOWE'S:

LOWE'S HOME CENTERS, INC.,
a North Carolina corporation

By: David E. Shelton KHL

Name: David E. Shelton
Senior Vice President

Title: _____

STATE OF NORTH CAROLINA
COUNTY OF ~~WILKES~~ Caldwell

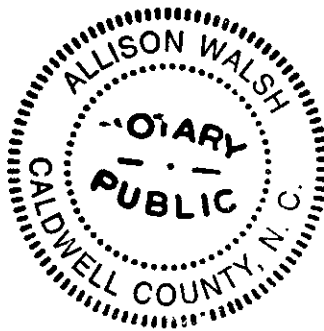
June Personally appeared before me, the undersigned authority in and for the said county and state, on this 11th day of May, 2002, within my jurisdiction, the within named David E. Shelton duly identified before me, who acknowledged that (s)he is the Senior Vice President of Lowe's Home Centers, Inc., a North Carolina corporation, and that for and on behalf of said corporation, and as its act and deed, (s)he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

Allison Walsh
Notary Public

My Commission Expires:

1-30-03

(Affix official seal)



CITY OF SOUTHAVEN, MISSISSIPPI, a municipal corporation

By: 

Name: Charles G. Davis

Title: Mayor

ATTESTED:


CITY CLERKSTATE OF MISSISSIPPI
COUNTY OF DESOTO

PERSONALLY appeared before me, the undersigned authority in and for said county and state, the within named Charles G. Davis, who acknowledged that he is the Mayor of the City of Southaven, and that for and on behalf of the City of Southaven, and as its act and deed, he signed, sealed and delivered the above and foregoing agreement.

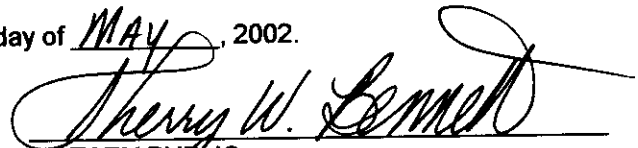
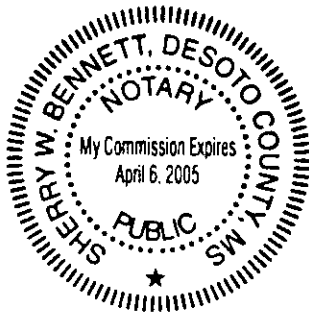
GIVEN under my hand and seal, this the 21st day of MAY, 2002.
NOTARY PUBLIC

EXHIBIT A
LEGAL DESCRIPTION

Beginning at a point on the South line of Lot 13, 302 Industrial Park, Second Revision, as recorded in Plat Book 26, Page 18, said point being 1032 feet (called) North and South 89 degrees 38 minutes 54 seconds West a distance of 547.87 feet (called) from the Southeast corner of Section 25, Township 1 South, Range 8 West; thence South 00 degrees 04 minutes 09 seconds East a distance of 522.21 feet to a point; thence South 89 degrees 51 minutes 17 seconds West a distance of 232.46 feet to a point; thence North 00 degrees 00 minutes 07 seconds West a distance of 62.13 feet to a point; thence North 89 degrees 55 minutes 36 seconds West a distance of 310.61 feet to a point; thence South 00 degrees 00 minutes 07 seconds East a distance of 239.66 feet to a point; thence North 89 degrees 55 minutes 50 seconds West a distance of 242.86 feet to a point; thence North 00 degrees 04 minutes 10 seconds East a distance of 940.09 feet to a point; thence North 89 degrees 38 minutes 54 seconds East a distance of 766.09 feet to a point; thence South 00 degrees 22 minutes 12 seconds East a distance of 245.26 feet to a point; thence North 89 degrees 38 minutes 54 seconds East a distance of 16.49 feet to the point of beginning and containing 620,210.67 square feet or 14.24 acres more or less.

Less and except the right of way of 302 Industrial Drive as shown on plat of subdivision in Plat Book 26, Page 18, in the Office of the Chancery Clerk of DeSoto County, Mississippi.

BEING ONE AND THE SAME PROPERTY AS DESCRIBED BELOW, TO-WIT:

Parcel I:

Lot 7, Second Revision, 302 Industrial Park Subdivision, in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 26, Page 18, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Parcel II:

Lot 8, Second Revision, 302 Industrial Park Subdivision, in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 26, Page 18, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Parcel III:

Lots 18-D and 18-E, Second Revision, 302 Industrial Park Subdivision, in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 26, Page 18, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Parcel IV:

Lots 14, 15 and 16, Second Revision, 302 Industrial Park Subdivision, in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 26, Page 18, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Parcel V:

Lot 22, Second Revision, 302 Industrial Park Subdivision, in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 26, Page 18, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Parcel VI:

Lots 18-B and 18-C, Second Revision, 302 Industrial Park Subdivision, in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 26, Page 18, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Parcel VII:

Lots 20 and 21, Second Revision, 302 Industrial Park Subdivision, in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 26, Page 18, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Parcel VIII:

Lot 19, Second Revision, 302 Industrial Park Subdivision, in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 26, Page 18, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Parcel IX:

Lot 18-A, Second Revision, 302 Industrial Park Subdivision, in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 26, Page 18, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Parcel X:

Lot 18-F, Second Revision, 302 Industrial Park Subdivision, in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 26, Page 18, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Parcel XI:

Lot 17, Second Revision, 302 Industrial Park Subdivision, in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 26, Page 18, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Parcel XII:

Lot 6, Second Revision, 302 Industrial Park Subdivision, in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 26, page 18, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Parcel XIII:

A portion of Lot 6, First Revision of Lots 1, 4 and 5 of Moore 5-Lot Subdivision, in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 37, Page 5, in the office of the Chancery Clerk of DeSoto County, Mississippi, more particularly described as follows, to-wit:

Beginning at the northwest corner of the aforementioned Lot 6, thence North 89 degrees 38 minutes 54 seconds East a distance of 231.85 feet to a point; thence South 00 degrees 04 minutes 09 seconds East a distance of 522.21 feet to a point; thence South 89 degrees 51 minutes 17 seconds W a distance of 232.46 feet to a point; thence North 00 degrees 00 minutes 07 seconds West a distance of 521.38 feet to the point of beginning and containing 121,136.04 square feet or 2.78 acres more or less.

Parcel XIV:

Lots 9 and 10, Second Revision, 302 Industrial Park Subdivision, in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 26, Page 18, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Parcel XV:

A portion of Lot 13, 302 Industrial Park Subdivision, Second Revision, in Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 26, Page 18, and being more particularly defined as follows:

Beginning at a point that is 1032 feet (called) North and 564.36 feet (called) West of the Southeast corner of Section 25, Township 1 South, Range 8 West, said point being on the South line of said Lot 13; thence South 89 degrees 38 minutes 54 seconds West along said South line a distance of 215.36 feet to the Southwest Corner of said Lot 13; thence North 00 degrees 00 minutes 07 seconds West along the West line of said Lot 13 a distance of 245.26 feet to the Northwest corner of said Lot 13, thence North 89 degrees 38 minutes 54 seconds East along the North line of said Lot 13 a distance of 213.78 feet to a point; thence South 00 degrees 22 minutes 12 seconds East a distance of 245.26 feet to the point of beginning, containing 1.21 acres more or less.

INDEXING INSTRUCTIONS ALL ABOVE REFERENCED PARCELS:

Southeast Quarter of Section 25, Township 1 South, Range 8 West, DeSoto County, Mississippi

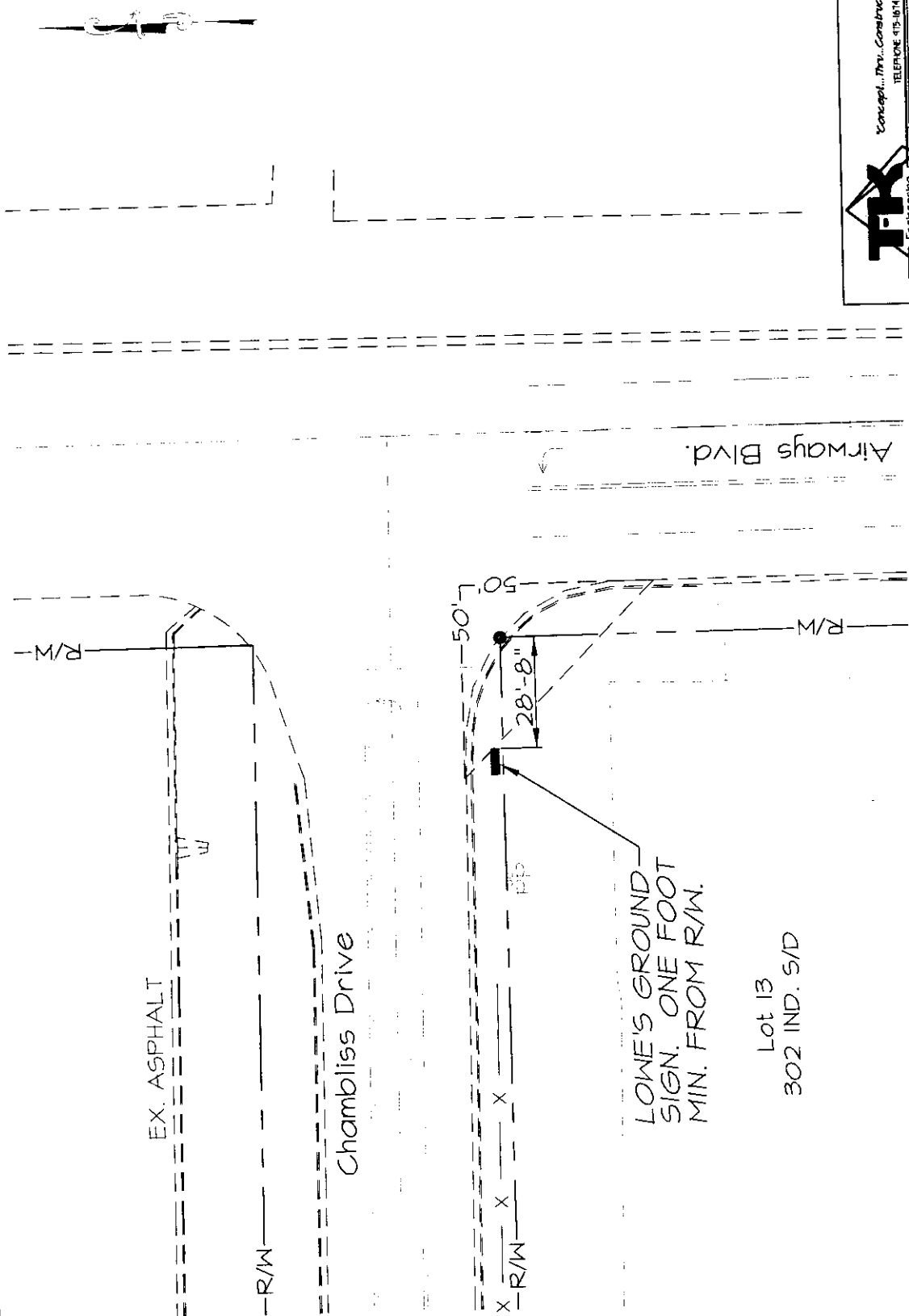
EXHIBIT B

LEGAL DESCRIPTION OF CITY PROPERTY

Being all of that certain public right-of-way known as Chambliss Drive, located in the County of DeSoto, City of Southaven, State of Mississippi.

EXHIBIT C

SITE PLAN



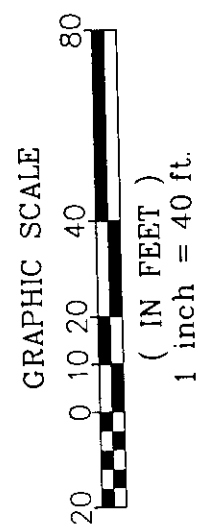
EX. ASPHALT

Chambliss Drive

Lot 13
302 IND. S/D

LOWE'S GROUND
SIGN. ONE FOOT
MIN. FROM R/W.

Airways Blvd.




 <p>Concept... thru... Construction TELEPHONE 415-1614 • FAX 415-1714 35350 GARTIS BLVD. SUITE 110 • EAST LAKE, OHIO 44095 T.K. Engineering & Design Group Inc.</p>	
<p>CHAMBLISS DR. & AIRWAYS BLVD. GROUND SIGN LOCATION PLAN</p> <p>LOWE'S OF SOUTHAVEN SOUTHAVEN, MISSISSIPPI</p>	
LOWE'S OF SOUTHAVEN	PROJ. #01037
MAY 2002	SHEET 1 OF 1

EXHIBIT D

LEGAL DESCRIPTION OF EASEMENT TRACT

SIGN EASEMENT

BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY OF CHAMBLISS DRIVE, SAID POINT BEING 22.05 FEET WEST OF THE WEST RIGHT OF WAY OF AIRWAYS BOULEVARD; THENCE S89°38'54"W ALONG THE FIRST SAID RIGHT OF WAY A DISTANCE OF 20.00 FEET TO A POINT; THENCE N00°21'06"W A DISTANCE OF 5.00 FEET TO A POINT; THENCE N89°38'54"E A DISTANCE OF 20.00 FEET TO A POINT; THENCE S00°21'06"E A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING, CONTAINING 100 SQUARE FEET, OR .0023 ACRES, MORE OR LESS.

INDEXING INSTRUCTIONS: THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 8 WEST.

file: d:\d:\wpdocs\Legal Lower Sign Easement

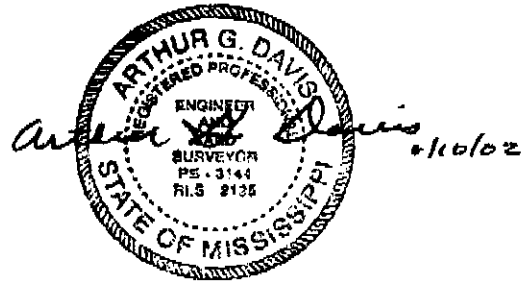


EXHIBIT E

DIRECTIONAL SIGN RENDERINGS



HARLAN LAWS CORPORATION
Signs of Success

304 Muldee Street
Durham, N.C.
27703

Tel: (919) 596-2124
Fax: (919) 596-0421
harlanlaws.com

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Phase:

☒ Conceptual

☐ Design Development

☐ Final Production

DRAWG. # M798202

DATE 21 May 02

REV. DATE

LOCATION MS

FILE SouthavenMS2

SALES REP. House

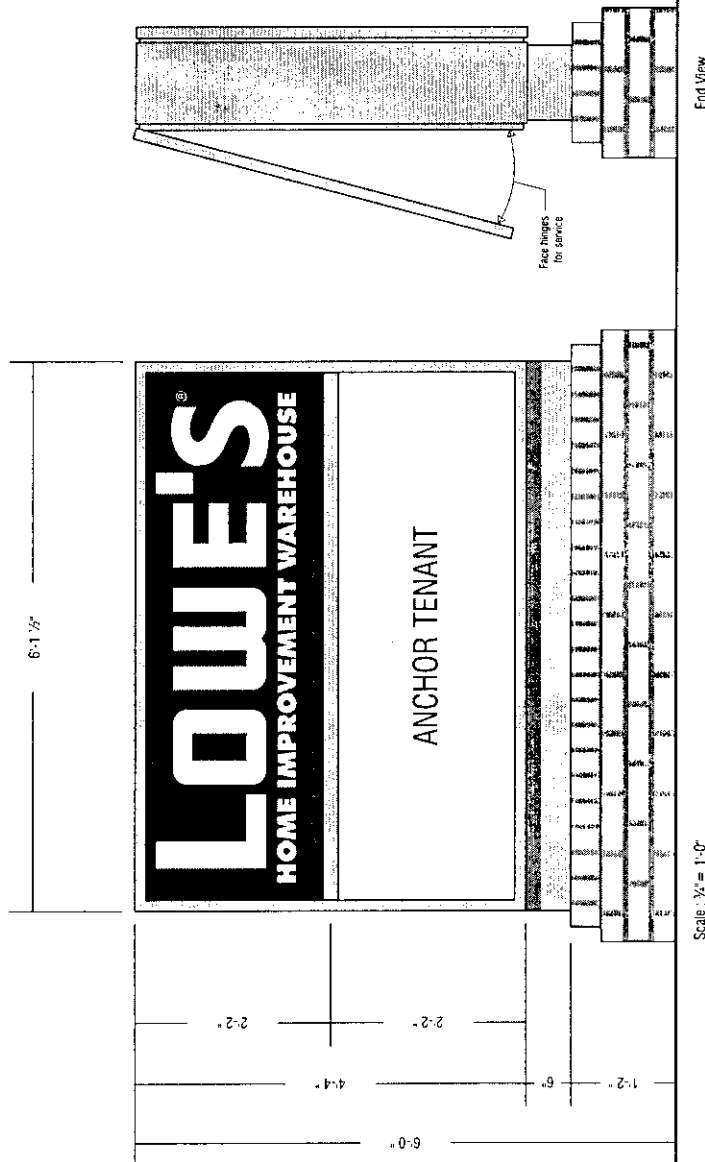
DRAWN BY BAINB

SCALE 3/4" = 1'-0"

LOWE'S

Approved by:

6/1/02



Scale: 3/4" = 1'-0"

LOWE'S @ Southaven, MS

(1) 4'-4" x 8'-1 1/2" Double face internally illuminated sign cabinet of aluminum extrusion w/ 1 1/2" hinged face retainers & 2" divider bars. Cabinets finished in acrylic urethane enamel to match Pantone 430 gray.

Cabinet faces of SC-400 white Lexan.

Internal illumination of all cabinets by horizontal fluorescent lamps powered by low-temperature ballasts. All wiring UL approved.

Cabinet mounted onto steel post set in concrete foundation.